

Memorandum 97-25**Trial Court Unification by County: Code of Civil Procedure (Initial Draft)**

Attached to this memorandum is the initial draft of Code of Civil Procedure revisions suggested by our consultant, Professor Kelso. This draft has been produced following our agreed-upon procedure with the Judicial Council — Professor Kelso produced a preliminary version for Judicial Council review and input before submitting the draft for public review and discussion by the Law Revision Commission.

At the Commission meeting, we will go through the significant issues identified by Professor Kelso. We will also consider any issues raised by Commission members or other interested participants.

The Commission's staff plans to raise a number of points concerning the draft, but due to the shortness of time available in this instance we have not had an opportunity to prepare detailed written notes. We will raise issues orally for the Commission at the meeting. We expect that for future meetings there will be sufficient time to allow the staff to annotate the drafts for the Commission and others in advance of the meeting.

After the Commission has made initial decisions on this draft, the staff will revise it in standard Commission form, along with preliminary explanatory material, and circulate it for review at the next meeting. We hope in this manner to be able to build a tentative recommendation piece by piece as we work our way through the various code revisions prepared by Professor Kelso with Judicial Council input.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

CODE OF CIVIL PROCEDURE

§ 30. Civil actions; minor and major.

(a) A civil action is prosecuted by one party against another for the declaration, enforcement or protection of a right, or the redress or prevention of a wrong.

(b) A civil action shall be either a “major civil action” or a “minor civil action.” A “minor civil action” means a civil action arising exclusively under one or more of the following statutes:

- (1) Civil Code § 798.61;
- (2) Civil Code § 1719;
- (3) Civil Code § 1780;
- (4) Civil Code § 1812.10;
- (5) Civil Code § 2984.4;
- (6) Civil Code § 3342.5;
- (7) Code of Civil Procedure § 86;
- (8) Code of Civil Procedure § 86.1;
- (9) Code of Civil Procedure § 392;
- (10) Code of Civil Procedure § 393;
- (11) Code of Civil Procedure § 395;
- (12) Code of Civil Procedure § 404;
- (13) Code of Civil Procedure § 688.010(b);
- (14) Code of Civil Procedure § 1710.20;
- (15) Education Code § 48295;
- (16) Fish & Game Code § 12150;
- (17) Fish & Game Code § 12151;
- (18) Food & Agricultural Code § 7581;
- (19) Food & Agricultural Code § 12647;
- (20) Food & Agricultural Code § 25564;
- (21) Food & Agricultural Code § 27601;
- (22) Food & Agricultural Code § 29733;
- (23) Food & Agricultural Code § 30801;
- (24) Food & Agricultural Code § 31503;
- (25) Food & Agricultural Code § 31621;
- (26) Food & Agricultural Code § 31622;
- (27) Food & Agricultural Code § 43039;
- (28) Food & Agricultural Code § 52514;
- (29) Food & Agricultural Code § 53564;
- (30) Food & Agricultural Code § 59289;
- (31) Government Code § 91013.5, when the amount in controversy amounts to twenty-five thousand dollars (\$25,000) or less;
- (32) Harbors & Navigation Code § 664;
- (33) Harbors & Navigation Code § 667;
- (34) Health & Safety Code § 1428;
- (35) Health & Safety Code § 4467;
- (36) Health & Safety Code § 4471.3;

- (37) Health & Safety Code § 25896.5;
- (38) Health & Safety Code § 26834;
- (39) Health & Safety Code § 26837;
- (40) Penal Code § 851.8;
- (41) Public Resources Code § 5560;
- (42) Public Resources Code § 14591.5;
- (43) Public Utilities Code § 5411.5;
- (44) Public Utilities Code § 7814;
- (45) Vehicle Code § 9872.1;
- (46) Vehicle Code § 10751;
- (47) Vehicle Code § 11102.1;
- (48) Vehicle Code § 11203;
- (49) Vehicle Code § 11301.5;
- (50) Vehicle Code § 11710.2;
- (51) Vehicle Code § 40502;
- (52) Vehicle Code § 40506.5;
- (53) Water Code § 310;
- (54) Uncodified Water Deer Act 2202 § 4;
- (55) Welfare & Institutions Code § 601.4;
- (56) Welfare & Institutions Code § 603.5; and
- (57) Any other civil action within the original jurisdiction of the municipal court as that jurisdiction exists in a county in which superior and municipal courts are not unified.

(c) A “major civil action” means a civil action other than a minor civil action.

Comment

There are a number of provisions throughout the C.C.P. that apply only to civil cases in the superior court or only to civil cases in the municipal court. At present, there is no convenient referent for classifying the two types of civil cases handled by the two different courts (as there is, by contrast, for classifying criminal actions as either felonies, misdemeanors, or infractions). This amendment creates two categories of cases, “major civil actions” and “minor civil actions.” Minor civil actions are those actions where jurisdiction is asserted only under statutes that create jurisdiction within the municipal court. All other civil actions are major civil actions. These definitions will permit us to maintain distinctions between superior and municipal court procedures without directly referring to the superior and municipal courts. *See infra* C.C.P. § 91 (economic litigation act procedures).

There are two different approaches for defining the distinction between major and minor civil actions. First, one could define “minor civil action” by listing all of the statutes where jurisdiction is granted to municipal courts. This approach has the advantage of grouping together in one place all of the jurisdictional grants to the municipal court, making it somewhat easier in a single glance to survey the court’s entire jurisdiction. This approach has the disadvantage of requiring the Legislature in the future to amend Section 30 every time a statute is enacted creating

new civil jurisdiction in the municipal court (and what happens if the Legislature enacts such a statute without amending Section 30?).

There is an alternative method of defining “minor civil action” that does not involve a lengthy list of statutes: “A ‘minor civil action’ means a civil action within the jurisdiction of a municipal court as that jurisdiction exists in counties in which municipal and superior courts are not unified.” This language has the advantages of brevity and comprehensiveness. Nothing will be missed with this approach. It also permits the Legislature to continue adding statutes creating new civil jurisdiction for municipal courts without requiring the Legislature to amend Section 30.

The language proposed above employs *both* approaches, first offering a list of all known statutes granting jurisdiction to municipal courts and, second, providing for a catch-all in subdivision (b)(57) to pick up any existing or future statutory causes of action within the original jurisdiction of the municipal courts.

§ 77. Appellate department division of superior court; composition; designated judges; decisions; transaction of business; jurisdiction and powers; procedure

(a) In every county and city and county, there is an appellate department division of the superior court consisting of three judges or, when the Chairperson of the Judicial Council finds it necessary, four judges.

(1) In a county with three or fewer judges of the superior court, the appellate department division shall consist of those judges, one of whom shall be designated as presiding judge by the Chairperson of the Judicial Council, and an additional judge or judges as designated by the Chairperson of the Judicial Council. Each additional judge shall be a judge of the superior court of another county or a judge retired from the superior court or court of higher jurisdiction in this state.

(2) In a county with four or more judges of the superior court, the appellate department division shall consist of judges of that court designated by the Chairperson of the Judicial Council, who shall also designate one of the judges as the presiding judge of the department division.

(b) In an appellate department division with four judges, no more than three judges shall participate in a hearing or decision. The presiding judge of the department division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate department division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate department division of the superior court of a county other than the county in which such judge was elected or appointed as a superior court judge, or if he is retired, in a county other than the county in which he resides, he shall receive from the county to which he is designated his expenses for travel, board, and lodging. If the judge is out of his county overnight or longer, by reason of the designation, such judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for such purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive from the state and the county to which he is designated,

for the time so served, amounts equal to that which he would have received from each if he had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate ~~department~~ division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except such as may be done at chambers by the presiding judge of, such ~~department~~ division. The presiding judge shall convene such ~~department~~ division at such times as may be necessary. He shall also supervise its business and transact such thereof as may be done at chambers.

(e) ~~Every appellate department under this section shall have jurisdiction on appeal from the municipal and justice courts within the county or city and county in all cases in which an appeal may be taken to the superior court as is now or may hereafter be provided by law, except such appeals as require a retrial in the superior court. The powers of each appellate department shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the superior courts. The appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as is now or may hereafter be provided by law, except such appeals as require a retrial in the superior court:~~

(1) The unified superior court, in causes of a type within the jurisdiction of municipal courts, as that jurisdiction exists in a county in which municipal and superior courts are not unified.

(2) The municipal courts within the county.

~~(f) The powers of the appellate ~~department~~ division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the superior courts.~~

~~(g) The Judicial Council may promulgate rules, not inconsistent with law, to promote the independence of, and governing the practice and procedure and the disposition of the business of such appellate departments, or of each class thereof, the appellate division.~~

(h) A reference in any other statute to the appellate department of the superior court means the appellate division of the superior court.

§ 82. Jurisdiction of Superior Courts.

(a) The establishment of a municipal court, or justice court, in a county, or city and county, or the determination of the jurisdiction of such courts by the Legislature, shall not affect, alter or diminish the previously existing jurisdiction of the superior court of any county, or city and county, other than that of the county, or city and county, wherein such municipal or justice court is established.

(b) A unified superior court has original jurisdiction of all civil actions.

§ 83. Concurrent jurisdiction

~~The jurisdiction of municipal and justice courts is the same and concurrent.~~

§ 84. Process; extent throughout state

The process of municipal courts and justice courts shall extend throughout the State.

§ 85. Money judgments; specification of time and terms of payment

If the judgment or order in a ~~municipal court or justice court~~ minor civil action in any action or proceeding in which the defendant has appeared is for the payment of money by the defendant, the defendant shall pay the same immediately or at any time and upon such terms and conditions, including installment payments, which the court may prescribe. The court may amend the terms and conditions for payment of the judgment or order at any time to provide for installment payments for good cause upon motion by a party and notice to all affected parties, regardless of the nature of the underlying debt and regardless whether the moving party appeared before entry of such judgment or order. In any determination regarding the imposition of terms and conditions upon the payment of the judgment, the court shall consider any factors which would be relevant to the determination of a claim for exemption pursuant to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 or the examination of a debtor pursuant to Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2.

§ 86. Jurisdiction

(a) Each municipal and justice court has original jurisdiction of civil cases and proceedings as follows:

(1) In all cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less, except cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except the courts have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) In actions for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000); in actions of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(3) In actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; in actions to revise a contract where the relief is sought in an action upon the contract if the court otherwise has jurisdiction of the action.

(4) In all proceedings in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) In all actions to enforce and foreclose liens on personal property where the amount of the liens is twenty-five thousand dollars (\$25,000) or less.

(6) In all actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, where an action to enforce the lien is pending in a municipal ~~or justice~~ court, and affects property which is also affected by a similar action pending in a superior court, or where the total amount of the liens sought to be foreclosed against the same property by action or actions in a municipal ~~or justice~~ court aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the municipal ~~or justice~~ court in which any such action, or actions, is, or are, pending, upon motion of any interested party, shall order the action or actions pending therein transferred to the proper superior court. Upon the making of the order, the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.

(7) In actions for declaratory relief when brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding otherwise within the jurisdiction of the municipal ~~or justice~~ court.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars (\$25,000) or less.

(8) To issue temporary restraining orders and preliminary injunctions, to take accounts, and to appoint receivers where necessary to preserve the property or rights of any party to an action of which the court has jurisdiction; to appoint a receiver and to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments); to determine title to personal property seized in an action pending in such court.

(9) In all actions under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars (\$25,000) or the debt denied does not exceed twenty-five thousand dollars (\$25,000).

(10) In all arbitration-related petitions filed pursuant to either of the following:

(A) Pursuant to Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is within the jurisdiction of the municipal ~~or justice~~ court under paragraphs (1) to (9), inclusive, or the petition if filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within the jurisdiction of the municipal ~~or justice~~ court under paragraphs (1) to (9), inclusive.

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars (\$25,000) or less.

(b) Each municipal and justice court has jurisdiction of cases in equity as follows:

(1) In all cases to try title to personal property when the amount involved is not more than twenty-five thousand dollars (\$25,000).

(2) In all cases when equity is pleaded as a defensive matter in any case otherwise properly pending in a municipal or justice court.

(3) To vacate a judgment or order of such municipal or justice court obtained through extrinsic fraud, mistake, inadvertence, or excusable neglect.

(c) In any action that is otherwise within its jurisdiction, the court may impose liability whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

~~(d) Changes in the jurisdictional ceilings made by amendments to this section at the 1977-78 Regular Session or the 1985-86 Regular Session of the Legislature shall not constitute a basis for the transfer to another court of any case pending at the time such changes become operative.~~

§ 86.1. Original jurisdiction; municipal and justice court; actions and proceedings brought pursuant to Long-Term Care, Health, Safety, and Security Act of 1973

In addition to Section 86, each municipal and justice court has original jurisdiction of civil cases and proceedings in actions brought pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code) if civil penalties are not sought or amount to twenty-five thousand dollars (\$25,000) or less. These actions may be transferred to the superior court for consolidation with any other citation enforcement action pending in that court, on the motion of either party.

§ 87. Corporation as party; persons authorized to appear

Where a corporation is a party in the municipal or justice court it may appear through a director, an officer, or an employee, whether or not such person is an attorney at law.

§ 88. Clerks of justice courts; powers and duties

~~Clerks of justice courts, in addition to the other powers conferred upon them by law, shall have power to administer and certify oaths to affidavits, and all papers, documents or instruments used in, or in connection with, the civil actions or proceedings in such justice courts and to issue summons and other writs and notices in civil actions in said courts in the name of the judge before whom the same is pending or out of whose court the same is issued.~~

§ 89. Issuance of papers in blank; effect; exception

~~The summons, execution, and every other paper made or issued by a judge of a justice court, except a subpoena, must be issued without a blank left to be filled by another, otherwise it is void.~~

§ 91. Application to ~~municipal and justice court~~ civil actions if amount in controversy is \$25,000 or less; exceptions; withdrawal

(a) Except as otherwise provided in this section, the provisions of this article apply to every ~~municipal and justice court~~ minor civil action, including cases submitted to arbitration or on the arbitration hearing list, ~~pending in the municipal and justice courts, on or after July 1, 1983,~~ in which the amount in controversy is twenty-five thousand dollars (\$25,000) or less. "Amount in controversy" means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, which is in controversy in the action, exclusive of attorney fees, interest, and costs. These provisions also apply to any action transferred to a ~~municipal or justice court~~ by reason of lack of jurisdiction in the court in which it was filed.

(b) The provisions of this article do not apply to any action under Chapter 5A (commencing with Section 116) or any proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(c) Any action may, upon noticed motion, be withdrawn from the provisions of this article, upon a showing that it is impractical to prosecute or defend the action within the limitations of these provisions.

~~(d) Special demurrers, motions to strike, and requests for discovery, pending or determined prior to July 1, 1983, shall be subject to the law in effect on June 30, 1983.~~

§ 116.120. Legislative findings and declaration

The Legislature hereby finds and declares as follows:

(a) Individual ~~minor~~ small civil disputes are of special importance to the parties and of significant social and economic consequence collectively.

(b) In order to resolve ~~minor~~ small civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.

(c) The small claims divisions of unified superior courts and municipal and justice courts have been established to provide a forum to resolve ~~minor~~ small civil disputes, and for that reason constitute a fundamental element in the administration of justice and the protection of the rights and property of individuals.

(d) The small claims divisions of ~~justice and~~ unified superior courts and municipal courts, the provisions of this chapter, and the rules of the Judicial Council regarding small claims actions shall operate to ensure that the convenience of parties and witnesses who are individuals shall prevail, to the extent possible, over the convenience of any other parties or witnesses.

§ 116.210. Small claims division

In each ~~justice court~~ unified superior court and each municipal court there shall be a small claims division , which may be known as the small claims court.

Comment

Under current law, what is popularly known as the “small claims court” is actually a *division* of the municipal court. Technically, it is not a jurisdictionally separate court. In other sections of the C.C.P., the small claims division is sometimes referred to as the “small claims court” and sometimes referred to as the “small claims division.” The technically correct name is “small claims division,” and all references in the codes to “small claims court” will be changed to “small claims division.” Nevertheless, it would be confusing to the public to change the name of what is popularly known as the “small claims court,” and this section expressly authorizes the small claims division to retain the name “small claims court” for colloquial use.

§ 116.220. Jurisdiction

(a) The small claims ~~court~~ division shall have jurisdiction in the following actions:

(1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars (\$5,000).

(2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars (\$5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars (\$5,000).

(4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars (\$5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing *de novo* between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars (\$5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims ~~court~~ division shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed two thousand five hundred dollars (\$2,500).

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

(e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections facility or a Youth Authority facility, the small claims court ~~division~~ shall have jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final administrative adjudication or determination of the plaintiff's administrative claim by the department may be attached to the complaint at the time of filing in lieu of that allegation.

(f) In any action governed by subdivision (e), if the plaintiff fails to provide proof of compliance with the requirements of subdivision (e) at the time of trial, the judicial officer shall, at his or her discretion, either dismiss the action or continue the action to give the plaintiff an opportunity to provide such proof.

(g) For purposes of this section, "department" includes an employee of a department against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department.

§ 116.231. Limitation on number of actions filed each year; demand amount; exceptions

(a) Except as provided in subdivision (d), no person may file more than two small claims actions in which the amount demanded exceeds two thousand five hundred dollars (\$2,500), anywhere in the state in any calendar year.

(b) Except as provided in subdivision (d), if the amount demanded in any small claims action exceeds two thousand five hundred dollars (\$2,500), the party making the demand shall file a declaration under penalty of perjury attesting to the fact that not more than two small claims actions in which the amount of the demand exceeded two thousand five hundred dollars (\$2,500) have been filed by that party in this state within the calendar year.

(c) The Legislature finds and declares that the pilot project conducted under the authority of Chapter 1196 of the Statutes of 1991 demonstrated the efficacy of the removal of the limitation on the number of actions public entities may file in the small claims courts divisions on claims exceeding two thousand five hundred dollars (\$2,500).

(d) The limitation on the number of filings exceeding two thousand five hundred dollars (\$2,500) does not apply to filings where the claim does not exceed five thousand dollars (\$5,000) which are filed by a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity. If any small claims action is filed by a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity pursuant to this section, and the defendant informs the court either in advance of the hearing by written notice or at the time of the hearing, that he or she is represented in the action by legal counsel, the action shall be transferred to the ~~municipal court~~ superior court, in a county in which municipal and superior courts have unified, or the municipal court, in a county in which municipal and superior courts have not unified. A city, county, city and county, school district, county office of education, community college district,

local district, or any other local public entity may not file a claim within the small claims division if the amount of the demand exceeds five thousand dollars (\$5,000).

§ 116.250. Court sessions; schedules

(a) Sessions of the small claims ~~court~~ division may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays. They may also be scheduled at any public building within the judicial district, including places outside the courthouse.

(b) Each small claims division of a municipal court or unified superior court with four or more judicial officers shall conduct at least one night session or Saturday session each month. The term "session" includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee.

§ 116.320. Commencement of action; claim form; necessary information

(a) A plaintiff may commence an action in the small claims ~~court~~ division by filing a claim under oath with the clerk of the small claims ~~court~~ division in person or by mail.

(b) The claim form shall be a simple nontechnical form approved or adopted by the Judicial Council. The claim form shall set forth a place for (1) the name and address of the defendant, if known; (2) the amount and the basis of the claim; (3) that the plaintiff, where possible, has demanded payment and, in applicable cases, possession of the property; (4) that the defendant has failed or refused to pay, and, where applicable, has refused to surrender the property; and (5) that the plaintiff understands that the judgment on his or her claim will be conclusive and without a right of appeal.

(c) The form or accompanying instructions shall include information that the plaintiff (1) may not be represented by an attorney, (2) has no right of appeal, and (3) may ask the court to waive fees for filing and serving the claim on the ground that the plaintiff is unable to pay them, using the forms approved by the Judicial Council for that purpose.

§ 116.390. Counterclaims in excess of jurisdictional limit; transfer of claims

(a) If a defendant has a claim against a plaintiff that exceeds the jurisdictional limits stated in Sections 116.220 and 116.231, and the claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff's claim, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims ~~court~~ division to transfer the small claims action to that court.

(b) The defendant may make the request by filing with the small claims ~~court~~ division in which the plaintiff commenced the action, at or before the time set for the hearing of that action, a declaration stating the facts concerning the defendant's action against the plaintiff with a true copy of the complaint so filed by the defendant against the plaintiff and the sum of one dollar (\$1) for a transmittal fee. The defendant shall cause a copy of the declaration and complaint to be personally delivered to the plaintiff at or before the time set for the hearing of the small claims action.

(c) In ruling on a motion to transfer, the small claims court division may do any of the following: (1) render judgment on the small claims case prior to the transfer; (2) not render judgment and transfer the small claims case; (3) refuse to transfer the small claims case on the grounds that the ends of justice would not be served. If the small claims action is transferred prior to judgment, both actions shall be tried together in the transferee court.

(d) When the small claims court division orders the action transferred, it shall transmit all files and papers to the transferee court.

(e) The plaintiff in the small claims action shall not be required to pay to the clerk of the transferee court any transmittal, appearance, or filing fee unless the plaintiff appears in the transferee court, in which event the plaintiff shall be required to pay the filing fee and any other fee required of a defendant in the transferee court. However, if the transferee court rules against the plaintiff in the action filed in that court, the court may award to the defendant in that action the costs incurred as a consequence of the transfer, including attorney's fees and filing fees.

§ 116.420. Assigned claims

(a) No claim shall be filed or maintained in a small claims court division by the assignee of the claim.

(b) This section does not prevent the filing or defense of an action in the small claims court division by (1) a trustee in bankruptcy in the exercise of the trustee's duties as trustee, or (2) by the holder of a security agreement, retail installment contract, or lien contract subject to the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code) or the Automobile Sales Finance Act (Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code), purchased by the holder for the holder's portfolio of investments, provided that the holder is not an assignee for the purpose of collection.

(c) This section does not prevent the filing in a small claims court division by a local government which is self-insured for purposes of workers' compensation and is seeking subrogation pursuant to Section 3852 of the Labor Code.

§ 116.530. Appearance by attorney; restrictions

(a) Except as permitted by this section, no attorney may take part in the conduct or defense of a small claims action.

(b) Subdivision (a) does not apply if the attorney is appearing to maintain or defend an action (1) by or against ~~himself or herself~~ the attorney, (2) by or against a partnership in which ~~he or she~~ the attorney is a general partner and in which all the partners are attorneys, or (3) by or against a professional corporation of which ~~he or she~~ the attorney is an officer or director and of which all other officers and directors are attorneys.

(c) Nothing in this section shall prevent an attorney from (1) providing advice to a party to a small claims action, either before or after the commencement of the action; (2) testifying to facts of which ~~he or she~~ the attorney has personal knowledge and about which ~~he or she~~ the attorney is competent to testify; (3)

representing a party in an appeal to the superior court; and (4) representing a party in connection with the enforcement of a judgment.

§ 116.531. Experts; assistance; testimony

Nothing in this article shall prevent a representative of an insurer or other expert in the matter before the small claims court division from rendering assistance to a party in the litigation except during the conduct of the hearing, either before or after the commencement of the action, unless otherwise prohibited by law; nor shall anything in this article prevent those individuals from testifying to facts of which they have personal knowledge and about which they are competent to testify.

§ 116.540. Appearance by person other than plaintiff or defendant; personal appearance by plaintiff or defendant

(a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) A corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court division.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court division.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting ~~his or her~~ the plaintiff's claim or allow another individual to appear and participate on ~~his or her~~ the plaintiff's behalf, if (1) the plaintiff is serving on active duty in the United States armed forces outside this state, (2) the plaintiff was assigned to ~~his or her~~ the plaintiff's duty station after ~~his or her~~ the plaintiff's claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220 and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility is not required to personally appear, and may submit declarations to serve as evidence supporting ~~his or her~~ the party's claim, or may

authorize another individual to appear and participate on ~~his or her~~ the party's behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting ~~his or her~~ the defendant's defense, (2) allowing another individual to appear and participate on ~~his or her~~ the defendant's behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in the small claims court division, and (2) the claim relates to the rental property.

(i) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (h), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is appearing under subdivision (b), (c), (d), or (h), the declaration also shall state that the individual is not employed solely to represent the party in small claims court division. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(j) ~~Spouses who sue or are sued together~~ ~~A husband or wife who sues or who is sued with his or her spouse~~ may appear and participate on behalf of ~~his or her spouse~~ each other if (1) the claim is a joint claim, (2) the represented spouse has given ~~his or her~~ consent, and (3) the court determines that the interests of justice would be served.

(k) If the court determines that a party cannot properly present ~~his or her~~ the party's claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(l) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

§ 116.541. Department of Corrections; Department of the Youth Authority; appearance by regular employees

(a) Notwithstanding Section 116.540 or any other provision of law, the Department of Corrections or the Department of the Youth Authority may appear and participate in a small claims action through a regular employee, who is employed or appointed for purposes other than solely representing that department in the small claims court division.

(b) Where the Department of Corrections or the Department of the Youth Authority is named as a defendant in the small claims court division, the representative of the department is not required to personally appear to challenge the plaintiff's compliance with the pleading requirements and may submit pleadings or declarations to assert that challenge.

(c) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of the Department of Corrections or the Department of the Youth Authority under subdivision (a) to file a declaration stating (1) that the individual is authorized to appear for the party, (2) the basis for that authorization, and (3) that the individual is not employed solely to represent the party in the small claims court division.

(d) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

(e) For purposes of this section, all references to the Department of Corrections or the Department of the Youth Authority include an employee thereof, against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department.

§ 116.550. English language understanding; interpreter list; hearing postponement

(a) If the court determines that a party does not speak or understand English sufficiently to comprehend the proceedings or give testimony, and needs assistance in so doing, the court may permit another individual (other than an attorney) to assist that party.

(b) Each small claims court division shall make a reasonable effort to maintain and make available to the parties a list of interpreters who are able and willing to aid parties in small claims actions either for no fee, or for a fee which is reasonable considering the nature and complexity of the claims. The list shall include interpreters for all languages that require interpretation before the court, as determined by the court in its discretion and in view of the court's experience.

(c) Failure to maintain a list of interpreters, or failure to include an interpreter for a particular language, shall not invalidate any proceedings before the court.

(d) If a court interpreter or other competent interpreter is not available to aid a party in a small claims action, at the first hearing of the case the court shall postpone the hearing one time only to allow the party the opportunity to obtain another individual (other than an attorney) to assist that party. Any additional continuances shall be at the discretion of the court.

§ 116.610. Damages; equitable relief; several judgment; costs; entry of judgment

(a) The small claims court division shall give judgment for damages, or equitable relief, or both damages and equitable relief, within the jurisdictional limits stated in Sections 116.220 and 116.231, and may make such orders as to time of payment or otherwise as the court deems just and equitable for the resolution of the dispute.

(b) The court may, at its discretion or on request of any party, continue the matter to a later date in order to permit and encourage the parties to attempt resolution by informal or alternative means.

(c) The judgment shall include a determination whether the judgment resulted from a motor vehicle accident on a California highway caused by the defendant's operation of a motor vehicle, or by the operation by some other individual, of a motor vehicle registered in the defendant's name.

(d) If the defendant has filed a claim against the plaintiff, or if the judgment is against two or more defendants, the judgment, and the statement of decision if one is rendered, shall specify the basis for and the character and amount of the liability of each of the parties, including, in the case of multiple judgment debtors, whether the liability of each is joint or several.

(e) If specific property is referred to in the judgment, whether it be personal or real, tangible or intangible, the property shall be identified with sufficient detail to permit efficient implementation or enforcement of the judgment.

(f) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

(g) The prevailing party is entitled to the costs of the action, including the costs of serving the order for the appearance of the defendant.

(h) When the court renders judgment, the clerk shall promptly deliver or mail notice of entry of the judgment to the parties, and shall execute a certificate of personal delivery or mailing and place it in the file.

(i) The notice of entry of judgment shall be on a form approved or adopted by the Judicial Council.

§ 116.710. Right to appeal

(a) The plaintiff in a small claims action shall have no right to appeal the judgment on the plaintiff's claim, but a plaintiff who did not appear at the hearing may file a motion to vacate the judgment in accordance with Section 116.720.

(b) The defendant with respect to the plaintiff's claim, and a plaintiff with respect to a claim of the defendant, may appeal the judgment by seeking a new hearing in to the superior court in the county in which the action was heard.

(c) With respect to the plaintiff's claim, the insurer of the defendant may appeal the judgment by seeking a new hearing in to the superior court in the county in which the matter was heard if the judgment exceeds two thousand five hundred dollars (\$2,500) and the insurer stipulates that its policy with the defendant covers the matter to which the judgment applies.

(d) A defendant who did not appear at the hearing has no right to appeal the judgment, but may file a motion to vacate the judgment in accordance with Section 116.730 or 116.740 and also may appeal the denial of that motion.

Comment

Although review of a small claims division judgment is referred to in this section as an "appeal," the review actually consists of a new hearing in the superior

court pursuant to C.C.P. § 116.770. In a unified superior court, appellate jurisdiction lies either to the appellate division of the superior court (in minor civil actions) or to the court of appeals (in major civil actions). In order to make it clear that an “appeal” of a small claims division judgment is not truly an invocation of appellate jurisdiction, this section is amended to clarify that the so-called appeal is actually a “new hearing” in the superior court.

§ 116.720. Failure of plaintiff to appear at hearing; motion to vacate judgment; hearing rescheduled

(a) A plaintiff who did not appear at the hearing in the small claims court division may file a motion to vacate the judgment with the clerk of the small claims court division. The motion shall be filed within 30 days after the clerk has mailed notice of entry of the judgment to the parties.

(b) The clerk shall schedule the hearing on the motion to vacate for a date no earlier than 10 days after the clerk has mailed written notice of the date, time, and place of the hearing to the parties.

(c) Upon a showing of good cause, the small claims court division may grant the motion. If the defendant is not present, the court shall hear the motion in the defendant's absence.

(d) If the motion is granted, and if all parties are present and agree, the court may hear the case without rescheduling it. If the defendant is not present, the judge or clerk shall reschedule the case and give notice in accordance with Section 116.330.

§ 116.730. Failure of defendant to appear at hearing; motion to vacate judgment; appeal of denied motion; hearing rescheduled

(a) A defendant who did not appear at the hearing in the small claims court division may file a motion to vacate the judgment with the clerk of the small claims court division. The motion shall be filed within 30 days after the clerk has mailed notice of entry of the judgment to the parties.

(b) The defendant shall appear at any hearing on the motion, or submit written justification for not appearing together with a declaration in support of the motion.

(c) Upon a showing of good cause, the court may grant the motion to vacate the judgment. If the plaintiff is not present, the court shall hear the motion in the plaintiff's absence.

(d) If the motion is granted, and if all parties are present and agree, the court may hear the case without rescheduling it. If the plaintiff is not present, the judge or clerk shall reschedule the case and give notice in accordance with Section 116.330.

(e) If the motion is denied, the defendant may appeal to the superior court only on the denial of the motion to vacate the judgment. The defendant shall file the notice of appeal with the clerk of the small claims court division within 10 days after the small claims court division has mailed or delivered notice of the court's denial of the motion to vacate the judgment.

(f) If the superior court determines that the defendant's motion to vacate the judgment should have been granted, the superior court may hear the claims of all parties without rescheduling the matter, provided that all parties are present and

the defendant has previously complied with this article, or may order the case transferred to the small claims court division for a hearing.

§ 116.740. Defective service on defendant; motion to vacate judgment

(a) If the defendant was not properly served as required by Section 116.330 or 116.340 and did not appear at the hearing in the small claims court division, the defendant may file a motion to vacate the judgment with the clerk of the small claims court division. The motion shall be accompanied by a supporting declaration, and shall be filed within 180 days after the defendant discovers or should have discovered that judgment was entered against the defendant.

(b) The court may order that the enforcement of the judgment shall be suspended pending a hearing and determination of the motion to vacate the judgment.

(c) Upon a showing of good cause, the court may grant the motion to vacate the judgment. If the plaintiff is not present, the court shall hear the motion in the plaintiff's absence.

(d) Subdivisions (d), (e), and (f) of Section 116.730 apply to any motion to vacate a judgment.

§ 116.750. Notice of appeal

(a) An appeal from a judgment in a small claims action is taken by filing a notice of appeal with the clerk of the small claims court division.

(b) A notice of appeal shall be filed not later than 30 days after the clerk has delivered or mailed notice of entry of the judgment to the parties. A notice of appeal filed after the 30-day period is ineffective for any purpose.

(c) The time for filing a notice of appeal is not extended by the filing of a request to correct a mistake or by virtue of any subsequent proceedings on that request, except that a new period for filing notice of appeal shall begin on the delivery or mailing of notice of entry of any modified judgment.

§ 116.760. Filing fee

(a) The appealing party shall pay the same superior court filing fee that is required for an appeal of a civil action ~~from a justice or municipal court.~~ to the appellate division of the superior court.

(b) A party who does not appeal shall not be charged any fee for filing any document in the superior court.

§ 116.770. Hearing de novo

(a) The appeal to the superior court shall consist of a new hearing before a judicial officer other than the judicial officer who presided over the action in the small claims division.

(b) The hearing on an appeal to the superior court shall be conducted informally. The pretrial discovery procedures described in subdivision (a) of Section 2019 are not permitted, no party has a right to a trial by jury, and no tentative decision or statement of decision is required.

(c) Article 5 (commencing with Section 116.510) on hearings in the small claims court division applies in hearings on appeal in the superior court, except that attorneys may participate.

(d) The scope of the hearing shall include the claims of all parties who were parties to the small claims action at the time the notice of appeal was filed. The hearing shall include the claim of a defendant which was heard in the small claims court division.

(e) The clerk of the superior court shall schedule the hearing for the earliest available time and shall mail written notice of the hearing to the parties at least 14 days prior to the time set for the hearing.

(f) The Judicial Council may prescribe by rule the practice and procedure on appeal and the time and manner in which the record on appeal shall be prepared and filed.

§ 116.780. Judgment on appeal; effect of judgment; costs and fees

(a) The judgment of the superior court after a hearing on appeal is final and not appealable.

(b) Article 6 (commencing with Section 116.610) on judgments of the small claims court division applies to judgments of the superior court after a hearing on appeal, except as provided in subdivisions (c) and (d).

(c) For good cause and where necessary to achieve substantial justice between the parties, the superior court may award a party to an appeal reimbursement of (1) attorney's fees actually and reasonably incurred in connection with the appeal, not exceeding one hundred fifty dollars (\$150), and (2) actual loss of earnings and expenses of transportation and lodging actually and reasonably incurred in connection with the appeal, not exceeding one hundred fifty dollars (\$150).

(d) Upon the expiration of 10 days following the completion of the appeal process, the superior court shall order the appeal and any judgment transferred to the small claims court division in which the action was originally filed for purposes of enforcement and other proceedings under Article 8 (commencing with Section 116.810) of this chapter.

§ 116.795. Failure to appear or delayed hearing; dismissal of appeal

(a) The superior court may dismiss the appeal if the appealing party does not appear at the hearing or if the appeal is not heard within one year from the date of filing the notice of appeal with the clerk of the small claims court division.

(b) Upon dismissal of an appeal by the superior court, the small claims court division shall thereafter have the same jurisdiction as if no appeal had been filed.

§ 116.810. Suspension of judgment during time for appeal

(a) Enforcement of the judgment of a small claims court division, including the issuance or recording of any abstract of the judgment, is automatically suspended, without the filing of a bond by the defendant, until the expiration of the time for appeal.

(b) If an appeal is filed as provided in Article 7 (commencing with Section 116.710), enforcement of the judgment of the small claims court division is

suspended unless (1) the appeal is dismissed by the superior court pursuant to Section 116.795, or (2) the superior court determines that the small claims ~~court~~ division properly denied the defendant's motion to vacate filed under Section 116.730 or 116.740. In either of those events, the judgment of the small claims ~~court~~ division may be enforced.

(c) The scope of the suspension of enforcement under this section and, unless otherwise ordered, of any suspension of enforcement ordered by the court, shall include any enforcement procedure described in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174.

§ 116.820. Provisions governing enforcement; costs of enforcement

(a) The judgment of a small claims ~~court~~ division may be enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts. A judgment of the superior court after a hearing on appeal, and after transfer to the small claims ~~court~~ division under subdivision (d) of Section 116.780, may be enforced like other judgments of the small claims ~~court~~ division, as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts.

(b) Fees as provided in Sections 26828, 26830, and 26834 of the Government Code shall be charged and collected by the clerk for the issuance of a writ of execution, an order of examination of a judgment debtor, or an abstract of judgment.

(c) The prevailing party in any action subject to this chapter is entitled to the costs of enforcing the judgment and accrued interest.

§ 116.840. Payment to judgment creditor or court

(a) At the option of the judgment debtor, payment of the judgment may be made either (1) to the judgment creditor in accordance with Section 116.850, or (2) to the court in which the judgment was entered in accordance with Section 116.860.

(b) The small claims ~~court~~ division may order entry of satisfaction of judgment in accordance with subdivisions (c) and (d) of Section 116.850, or subdivision (b) of Section 116.860.

§ 116.930. Informational publications to be available in courtrooms; manuals for litigants, judges and general public

(a) Each small claims division shall provide in each courtroom in which small claims actions are heard a current copy of a publication describing small claims ~~court~~ division law and the procedures that are applicable in the small claims ~~courts~~ divisions, including the law and procedures that apply to the enforcement of judgments. The Small Claims Court and Consumer Law California Judge's Bench Book developed by the California Center for Judicial Education and Research is illustrative of a publication that satisfies the requirement of this subdivision.

(b) Each small claims division may formulate and distribute to litigants and the public a manual on small claims ~~court~~ division rules and procedures. The manual shall explain how to complete the necessary forms, how to determine the proper court in which small claims actions may be filed, how to present and defend

against claims, how to appeal, how to enforce a judgment, how to protect property that is exempt from execution, and such other matters that the court deems necessary or desirable.

(c) If the Department of Consumer Affairs determines there are sufficient private or public funds available in addition to the funds available within the department's current budget, the department, in cooperation with the Judicial Council, shall prepare a manual or information booklet on small claims ~~court~~ division rules and procedures. The department shall distribute copies to the general public and to each small claims division.

(d) If funding is available, the Judicial Council, in cooperation with the Department of Consumer Affairs, shall prepare and distribute to each judge who sits in a small claims ~~court~~ division a bench book describing all state and federal consumer protection laws reasonably likely to apply in small claims actions.

§ 116.940. Advisory services; immunities

(a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in each ~~municipal and justice~~ court clerk's office, the county administrator's office, other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisors may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisors shall not appear in court as an advocate for any party.

(f) Advisors and other court employees and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided under this chapter.

§ 116.950. Advisory committee; operation of section

(a) This section shall become operative only if the Department of Consumer Affairs determines that sufficient private or public funds are available in addition to the funds available in the department's current budget to cover the costs of implementing this section.

(b) There shall be established an advisory committee, constituted as set forth in this section, to study small claims practice and procedure, with particular attention given to the improvement of procedures for the enforcement of judgments.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties. The advisory committee shall report its findings and recommendations to the Judicial Council and the Legislature.

(d) The advisory committee shall be composed as follows:

(1) The Attorney General or a representative.

(2) Two consumer representatives from consumer groups or agencies, appointed by the Secretary of the State and Consumer Services Agency.

(3) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate.

(4) Two representatives, appointed by the Board of Governors of the State Bar.

(5) Two representatives of the business community, appointed by the Secretary of the Trade and Commerce Agency.

(6) Six judges of the municipal court ~~or justice court~~ who have had extensive experience as judges of small claims ~~court~~ actions, appointed by the Judicial Council.

(7) One representative appointed by the Governor.

(8) Two clerks of the court, appointed by the Judicial Council.

(e) Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs, with the assistance of the Judicial Council, as needed.

§ 134. Court closure on judicial holidays; exceptions

(a) Except as provided in subdivision (c), the courts shall be closed for the transaction of judicial business on judicial holidays for all but the following purposes:

(1) To give, upon their request, instructions to a jury when deliberating on their verdict.

(2) To receive a verdict or discharge a jury.

(3) For the conduct of arraignments and the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

(4) For the conduct of Saturday small claims ~~court~~ division sessions pursuant to the Small Claims Act set forth in Chapter 5.5 (commencing with Section 116.110).

(b) Injunctions and writs of prohibition may be issued and served on any day.

(c) In any superior, ~~municipal, or justice court,~~ or municipal court, one or more departments of the court may remain open and in session for the transaction of any business which may come before the department in the exercise of the civil or criminal jurisdiction of the court, or both, on a judicial holiday or at any hours of the day or night, or both, as the judges of the court prescribe.

(d) The fact that a court is open on a judicial holiday shall not make that day a nonholiday for purposes of computing the time required for the conduct of any proceeding nor for the performance of any act. Any paper lodged with the court at a time when the court is open pursuant to subdivision (c), shall be filed by the court on the next day which is not a judicial holiday, if the document meets appropriate criteria for filing.

§ 166. Judges of superior, ~~municipal and justice and municipal~~ courts

(a) The judge or judges of the superior, ~~municipal and justice and municipal~~ courts may, in chambers, in the matters within the jurisdiction of their respective courts:

(1) Grant all orders and writs which are usually granted in the first instance upon an ex parte application, and hear and dispose of those orders and writs, appoint referees, require and receive inventories and accounts to be filed, order notice of settlement of supplemental accounts, suspend the powers of personal representatives, guardians, or conservators in the cases allowed by law, appoint special administrators, grant letters of temporary guardianship or conservatorship, approve or reject claims, and direct the issuance from the court of all writs and process necessary in the exercise of their powers in matters of probate.

(2) Hear and determine all motions made pursuant to Section 657 or 663.

(3) Hear and determine all uncontested actions, proceedings, demurrers, motions, petitions, applications, and other matters pending before the court other than actions for dissolution of marriage, for legal separation, or for a judgment of nullity of the marriage, and except also applications for confirmation of sale of real property in probate proceedings.

(4) Hear and determine motions to tax costs of enforcing a judgment.

(5) Approve bonds and undertakings.

(b) A judge may, out of court, anywhere in the state, exercise all the powers and perform all the functions and duties conferred upon a judge as contradistinguished from the court, or which a judge may exercise or perform in chambers.

§ 170.5. Definitions

For the purposes of Sections 170 to 170.5, inclusive, the following definitions apply:

(a) "Judge" means judges of the justice, ~~municipal~~, municipal and superior courts, and court commissioners and referees.

(b) "Financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities unless the judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(c) "Officer of a public agency" does not include a Member of the Legislature or a state or local agency official acting in a legislative capacity.

(d) The third degree of relationship shall be calculated according to the civil law system.

(e) "Private practice of law" includes a fee for service, retainer, or salaried representation of private clients or public agencies, but excludes lawyers as full-time employees of public agencies or lawyers working exclusively for legal aid offices, public defender offices, or similar nonprofit entities whose clientele is by law restricted to the indigent.

(f) "Proceeding" means the action, case, cause, motion, or special proceeding to be tried or heard by the judge.

(g) "Fiduciary" includes any executor, trustee, guardian, or administrator.

§ 170.6. Prejudice against party, attorney or interest thereof; motion and affidavit; assignment of another judge, court commissioner or referee; number of motions; continuance; cumulative remedy; severability

(1) No judge, court commissioner, or referee of any superior, ~~municipal~~ or justice municipal court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein which involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in the action or proceeding.

(2) Any party to or any attorney appearing in any such action or proceeding may establish this prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury or an oral statement under oath that the judge, court commissioner, or referee before whom the action or proceeding is pending or to whom it is assigned is prejudiced against any such party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee. Where the judge, other than a judge assigned to the

case for all purposes, court commissioner, or referee assigned to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. If directed to the trial of a cause which has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance. If the court in which the action is pending is authorized to have no more than one judge and the motion claims that the duly elected or appointed judge of that court is prejudiced, the motion shall be made before the expiration of 30 days from the date of the first appearance in the action of the party who is making the motion or whose attorney is making the motion. In no event shall any judge, court commissioner, or referee entertain the motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there is no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion shall be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

A motion under this paragraph may be made following reversal on appeal of a trial court's decision if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3) If the motion is duly presented and the affidavit or declaration under penalty of perjury is duly filed or such oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chairman of the Judicial Council shall assign some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. Under no circumstances shall a party or attorney be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or

§ 170.7. Judge serving on appellate department; application of section 170.6

Section 170.6 does not apply to a judge designated or assigned to serve on the appellate department division of a superior court in his the judge's capacity as a judge of such department division.

§ 179. Taking and certifying acknowledgments, affidavits or depositions

Each of the justices of the Supreme Court and of any court of appeal and the judges of the superior courts, shall have power in any part of the state, and every municipal court judge and ~~judge of a justice court~~ shall have power within the county or city and county in which he the municipal court judge is elected or appointed, to take and certify:

1. The proof and acknowledgment of a conveyance of real property, or of any other written instrument.
2. The acknowledgment of satisfaction of a judgment of any court.
3. An affidavit or deposition to be used in this state.

§ 194. Definitions

The following definitions govern the construction of this chapter:

- (a) "County" means any county or any coterminous city and county.
- (b) "Court" means the superior, ~~municipal, and justice~~ and municipal courts of this state, and includes, when the context requires, any judge of the court.
- (c) "Deferred jurors" are those prospective jurors whose request to reschedule their service to a more convenient time is granted by the jury commissioner.
- (d) "Excused jurors" are those prospective jurors who are excused from service by the jury commissioner for valid reasons based on statute, state or local court rules, and policies.
- (e) "Juror pool" means the group of prospective qualified jurors appearing for assignment to trial jury panels.
- (f) "Jury of inquest" is a body of persons summoned from the citizens before the sheriff, coroner, or other ministerial officers, to inquire of particular facts.
- (g) "Master list" means a list of names randomly selected from the source lists.
- (h) "Potential juror" means any person whose name appears on a source list.
- (i) "Prospective juror" means a juror whose name appears on the master list.
- (j) "Qualified juror" means a person who meets the statutory qualifications for jury service.
- (k) "Qualified juror list" means a list of qualified jurors.
- (l) "Random" means that which occurs by mere chance indicating an unplanned sequence of selection where each juror's name has substantially equal probability of being selected.
- (m) "Source list" means a list used as a source of potential jurors.
- (n) "Summons list" means a list of prospective or qualified jurors who are summoned to appear or to be available for jury service.
- (o) "Trial jurors" are those jurors sworn to try and determine by verdict a question of fact.

(p) "Trial jury" means a body of persons selected from the citizens of the area served by the court and sworn to try and determine by verdict a question of fact.

(q) "Trial jury panel" means a group of prospective jurors assigned to a courtroom for the purpose of voir dire.

§ 195. Jury commissioners; appointment; term; ex officio commissioners; clerk/administrators; salaries; duties

(a) In each county, there shall be one jury commissioner who shall be appointed by, and serve at the pleasure of, a majority of the judges of the superior court. In any county where there is a superior court administrator or executive officer, that person shall serve as ex officio jury commissioner. The person so appointed shall serve as jury commissioner for all trial courts within the county. In any municipal or justice court district in the county, a majority of the judges may appoint the clerk/administrator to select jurors for their court pursuant to this chapter. In any court jurisdiction where any person other than a court administrator or clerk/administrator is serving as jury commissioner on the effective date of this section, that person shall continue to so serve at the pleasure of a majority or the judges of the appointing court.

(b) Except where the superior court administrator or executive officer serves as ex officio jury commissioner, the jury commissioner's salary shall be set by joint action of the board of supervisors and a majority of the superior court judges. Any jury commissioner may, whenever the business of court requires, and with consent of the board of supervisors, appoint deputy jury commissioners. Salaries and benefits of such deputies shall be fixed in the same manner as salaries and benefits of other court employees.

(c) The jury commissioner shall be primarily responsible for managing the jury system under the general supervision of the court in conformance with the purpose and scope of this act. He or she shall have authority to establish policies and procedures necessary to fulfill this responsibility.

§ 199.2. Placer County; Tahoe Judicial District; drawing jury trial venires

(a) If the superior and municipal courts in Placer County unify pursuant to Article VI, Section 5(e) of the California Constitution, prospective jurors residing in what was formerly the Tahoe Division of the Placer County Municipal Court, except as provided in subdivision (c), shall only be included in trial court venires for sessions of the superior court held within that division.

~~(b) Otherwise, In Placer County prospective jurors residing in the Tahoe Division of the Placer County Municipal Court, except as otherwise provided in this section subdivision (c), shall only be included in trial court venires for sessions of the superior court held within that division. However,~~

~~(c) each~~ Each prospective juror residing in the county shall be given the opportunity to elect to serve on juries with respect to trials held anywhere in the county in accordance with the rules of the superior court, which shall afford to each eligible resident of the county an opportunity for selection as a trial jury venireman. Additionally, nothing in this section shall preclude the superior or municipal court, in its discretion, from ordering a countywide venire in the interest of justice.

§ 199.3. Nevada County; Truckee Division; drawing jury trial venires

(a) If the superior and municipal courts in Nevada County unify pursuant to Article VI, Section 5(e) of the California Constitution, prospective jurors residing in what was formerly the Truckee Division of the Nevada County Municipal Court, except as provided in subdivision (c), shall only be included in trial court venires for sessions of the superior court held within that division.

(b) ~~Otherwise, In Nevada County,~~ prospective jurors residing in the Truckee Division of the Nevada County Municipal Court, except as ~~otherwise~~ provided in ~~this section~~ subdivision (c), shall only be included in trial court venires of divisions of the superior court located within the Truckee Division of the Nevada County Municipal Court during the months of November, December, January, and February. ~~However,~~

(c) ~~each~~ Each prospective juror residing in the Truckee Division of the Nevada County Municipal Court shall be given the opportunity to elect to serve on juries with respect to trials at other locations during those months in accordance with the rules of the superior court, which shall afford to each eligible resident of the county an opportunity for selection as a trial jury venireman. Additionally, nothing in this section shall preclude the superior court, in its discretion, from ordering a countywide venire in the interest of justice during any time of the year.

§ 200. Alameda County; drawing jury trial venires

Except in Alameda County, when authorized by local superior court rules, a municipal ~~or justice~~ court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal ~~or justice~~ courts need not be residents of the judicial district. In Los Angeles County, the municipal courts shall use the same jury pool as that summoned for use in the superior court.

§ 215. Fees for jurors; mileage

Unless a higher fee is provided for each day's attendance by county or city and county ordinance, the fee for jurors in the superior, ~~municipal, and justice~~ and municipal courts, in civil and criminal cases, is five dollars (\$5) a day for each day's attendance as a juror. Unless a higher rate of mileage is otherwise provided by statute or by county or city and county ordinance, jurors in the superior, ~~municipal, and justice~~ municipal courts shall be reimbursed for mileage at the rate of fifteen cents (\$0.15) per mile for each mile actually traveled in attending court as a juror, in going only.

(b) In criminal cases, the board of supervisors of each county shall make sufficient appropriations for the payment of the fees provided for in this section.

§ 217. Criminal cases; food, lodging, and necessities for jurors; expenses

In criminal cases only, while the jury is kept together, either during the progress of the trial or after their retirement for deliberation, the court may direct the sheriff or marshal to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. In the superior, ~~municipal, and justice~~ and

municipal courts, the expenses incurred under the provisions of this section shall be charged against the county or city and county in which the court is held. All those expenses shall be paid on the order of the court.

§ 221. Experimental eight person juries

~~(a) A trial jury in civil actions in municipal and justice courts may consist of eight persons in the County of Los Angeles, pursuant to rules adopted by the Judicial Council, as an experimental project operative until July 1, 1989.~~

~~(b) The Judicial Council shall appoint an advisory committee which shall include at least one judge of each court or courts in which the project will take place, one court administrator from that court or courts, or his or her designee, and one member of the Los Angeles County Bar Association, Trial Lawyers Section, who practices in the municipal or justice courts, to make recommendations regarding the design of the eight person jury experiment. The Judicial Council shall adopt rules for the implementation of the project, including rules governing the assignment of cases to eight person juries during the experimental period, and establish procedures for the collection and evaluation of data.~~

~~(c) The Judicial Council shall report to the Legislature no later than January 1, 1990, comparing the performance of eight and 12 person juries. The comparison shall include, but not be limited to, the following factors:~~

- ~~(1) Cross-sectional representation of the community.~~
- ~~(2) Numbers of verdicts favoring plaintiffs or defendants, and size of awards.~~
- ~~(3) Accuracy, consistency, and reliability of awards.~~
- ~~(4) Time required for impanelment, trial, and deliberations.~~
- ~~(5) Public and private costs of the jury.~~

~~(d) Notwithstanding the provisions of Section 206, the project courts shall collect and provide to the Judicial Council the data required for a proper evaluation of the experiment. Any bona fide researcher or research organization shall be permitted access to any data regarding the conduct or evaluation of the pilot project.~~

§ 234. Alternate jurors; drawing and examining; qualifications; attendance; confinement; replacing original juror; fees and expenses

Whenever, in the opinion of a judge of a superior, ~~municipal, or justice or~~ municipal court about to try a civil or criminal action or proceeding, the trial is likely to be a protracted one, or upon stipulation of the parties, the court may cause an entry to that effect to be made in the minutes of the court and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as "alternate jurors."

These alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn, and shall be subject to the same examination and challenges. However, each side, or each defendant, as provided in Section 231, shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and shall, unless excused by the court, attend at all times

upon the trial of the cause in company with the other jurors, but shall not participate in deliberation unless ordered by the court, and for a failure to do so are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff or marshal during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff or marshal who shall not suffer any communication to be made to them except by order of the court, and shall not be discharged until the original jurors are discharged, except as provided in this section.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she has been selected as one of the original jurors.

All laws relative to fees, expenses, and mileage or transportation of jurors shall be applicable to alternate jurors, except that in civil cases the sums for fees and mileage or transportation need not be deposited until the judge directs alternate jurors to be impaneled.

§ 274c. Municipal and justice courts; duties; certified transcripts

Official reporters of a municipal or justice court, or any one of them, must, at the request of either party or of the court in a civil proceeding, or on the order of the court in a criminal action or proceeding, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, the arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of such case as the court may designate, write out the same, or such specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court.

Comments

The Judicial Council's SCA 4 committee is seeking further information about how C.C.P. sections dealing with court reporters should be handled. Therefore, the Commission should defer consideration of this section at this time.

§ 391. Definitions

As used in this title, the following terms have the following meanings:

(a) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.

(b) "Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court division that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(c) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

§ 392. Real property actions; proper court

(1) Subject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the real property, which is the subject of the action, or some part thereof, is situated, is the proper county for the trial of the following actions:

(a) For the recovery of real property, or of an estate or interest therein, or for the determination in any form, of such right or interest, and for injuries to real property;

(b) For the foreclosure of all liens and mortgages on real property.

(2) The proper court for the trial of any such action, in the county hereinabove designated as the proper county, shall be determined as follows: If there is a municipal or justice court, having jurisdiction of the subject matter of the

action, established in the city and county or judicial district in which the real property which is the subject of the action, or some part thereof, is situated, such court is the proper court for the trial of such action; otherwise any court in such county having jurisdiction of the subject matter of the action, is a proper court for the trial thereof.

§ 393. Actions for penalty or forfeiture; actions against public officers; proper court

(1) Subject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the cause, or some part thereof, arose, is the proper county for the trial of the following actions:

(a) For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be tried in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed;

(b) Against a public officer or person especially appointed to execute his duties, for an act done by him in virtue of his office; or against a person who, by his command or in his aid, does anything touching the duties of such officer.

(2) The proper court for the trial of any such action, in the county hereinabove designated as the proper county, shall be determined as follows: If there is a municipal or justice court, having jurisdiction of the subject matter of the action, established in the city and county or judicial district in which the cause, or some part thereof, arose, such court is the proper court for the trial of such action; otherwise, any court in such county, having jurisdiction of the subject matter of the action, is a proper court for the trial thereof. In the case of offenses committed on a lake, river, or stream, hereinabove mentioned, the court, having jurisdiction of the subject matter of the action, nearest to the place where such offense was committed, in any county mentioned in subdivision 1 of this section, is a proper court for the trial of the action.

§ 395. Actions generally; proper court; waiver

(a) Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants or some of them reside at the commencement of the action is the proper county for the trial of the action. If the action is for injury to person or personal property or for death from wrongful act or negligence, either the county where the injury occurs or the injury causing death occurs or the county in which the defendants, or some of them reside at the commencement of the action, shall be a proper county for the trial of the action. In a proceeding for dissolution of marriage, the county in which either the petitioner or respondent has been a resident for three months next preceding the commencement of the proceeding is the proper county for the trial of the proceeding. In a proceeding for nullity of marriage or legal separation of the parties, the county in which either the petitioner or the respondent resides at the commencement of the proceeding is the proper county for the trial of the proceeding. In a proceeding to enforce an obligation of support under Section 3900 of the Family Code, the county in which the child resides is the proper county

for the trial of the action. In a proceeding to establish and enforce a foreign judgment or court order for the support of a minor child, the county in which the child resides is the proper county for the trial of the action. Subject to subdivision (b), when a defendant has contracted to perform an obligation in a particular county, either the county where the obligation is to be performed or in which the contract in fact was entered into or the county in which the defendant or any such defendant resides at the commencement of the action shall be a proper county for the trial of an action founded on that obligation, and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the state or if residing in the state and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his or her complaint, and, if the defendant is about to depart from the state, the action may be tried in any county where either of the parties reside or service is made. If any person is improperly joined as a defendant or has been made a defendant solely for the purpose of having the action tried in the county or judicial district where he or she resides, his or her residence shall not be considered in determining the proper place for the trial of the action.

(b) Subject to the power of the court to transfer actions or proceedings as provided in this title, in an action arising from an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use, other than an obligation described in Section 1812.10 or Section 2984.4 of the Civil Code, or an action arising from a transaction consummated as a proximate result of an unsolicited telephone call made by a seller engaged in the business of consummating transactions of that kind, the county in which the buyer or lessee in fact signed the contract, the county in which the buyer or lessee resided at the time the contract was entered into, or the county in which the buyer or lessee resides at the commencement of the action is the proper county for the trial thereof.

(c) If within the county there is a municipal ~~or justice~~ court having jurisdiction of the subject matter established, in the cases mentioned in subdivision (a), in the judicial district in which the defendant or any defendant resides, in which the injury to person or personal property or the injury causing death occurs, or, in which the obligation was contracted to be performed or, in cases mentioned in subdivision (b), in the judicial district which the buyer or lessee resides, in which the buyer or lessee in fact signed the contract, in which the buyer or lessee resided at the time the contract was entered into, or in which the buyer or lessee resides at the commencement of the action, then that court is the proper court for the trial of the action. Otherwise, any municipal ~~or justice~~ court in the county having jurisdiction of the subject matter is a proper court for the trial thereof.

(d) Any provision of an obligation described in subdivision (b) or (c) waiving those subdivisions is void and unenforceable.

§ 396. Court without jurisdiction; transfer of case; cross-complaint beyond jurisdiction; time action deemed commenced; remission of amount of demand in excess of jurisdiction

If an action or proceeding is commenced in a court which lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state which has such jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and subdivision 1 of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter which may be agreed upon by the parties, or, if they do not agree, to a court having such jurisdiction which is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In any such case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon such defendant of written notice of filing of such action or proceeding in the court to which it is transferred.

If an action or proceeding is commenced in or transferred to a court which has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever such lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof which may be agreed upon by the parties, or, if they do not agree, to a court having such jurisdiction which is designated by law as a proper court for the trial or determination thereof.

An action or proceeding which is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.

Nothing herein shall be construed to preclude or affect the right to amend the pleadings as provided in this code.

Nothing herein shall be construed to require the superior court to transfer any action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one which might have been rendered by a municipal or justice court in the same county or city and county.

In any case where the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue in the court where it is pending.

Upon the making of an order for such transfer, proceedings shall be had as provided in Section 399 of this code, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which

the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.

§ 396a. ~~Justice or municipal~~ Municipal courts; statement of jurisdictional facts; transfers; consent to retention of case

In all minor civil actions and proceedings commenced in a ~~justice or unified superior court or a municipal court~~ which are subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action or proceeding for an unlawful detainer as defined in Section 1161 of the Code of Civil Procedure plaintiff shall state facts in the complaint, verified by his oath, or the oath of his attorney, or in an affidavit of the plaintiff or of his attorney filed with the complaint, showing that the action has been commenced in the proper court for the trial of such action or proceeding, and showing that the action is subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action for an unlawful detainer. When such affidavit is filed with the complaint, a copy thereof must be served with the summons. Except as herein provided, if such complaint or affidavit be not so filed, no further proceedings shall be had in the action or proceeding, except to dismiss the same without prejudice. However, the court may, on such terms as may be just, permit such affidavit to be filed subsequent to the filing of the complaint, and a copy of such affidavit shall be served on the defendant and the time to answer or otherwise plead shall date from such service. If it appears from such complaint or affidavit, or otherwise, that the court in which such action or proceeding is commenced is not the proper court for the trial thereof, the court in which such action or proceeding is commenced, or a judge thereof, shall, whenever such fact appears, transfer it to such proper court, on its own motion, or on motion of the defendant, unless the defendant consents in writing, or in open court (such consent in open court being entered in the minutes or docket of the court), to the keeping of the action or proceeding in the court where commenced. If such consent be given, the action or proceeding may continue in the court where commenced. Notwithstanding the provisions of Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil Code that consent may be given by a defendant who is represented by counsel at the time the consent is given, and where an action or proceeding is subject to the provisions of subdivision (b) of Section 395 of the Code of Civil Procedure or is for an unlawful detainer, that consent may only be given by a defendant who is represented by counsel at the time the consent is given. In any such case where the transfer of the action or proceeding is ordered under the provisions of this paragraph, if summons is served prior to the filing of such action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon such defendant of written notice of such filing.

When it appears from such complaint or affidavit of the plaintiff that the court in which such action or proceeding is commenced is a proper court for the trial thereof, all proper proceedings may be had, and the action or proceeding may be tried therein; provided, however, that in such case a motion for a transfer of the

action or proceeding may be made as in other cases, within the time, upon the grounds, and in the manner provided in this title, and if upon such motion it appears that such action or proceeding is not pending in the proper court, or should for other cause be transferred, the same shall be ordered transferred as provided in this title.

When any such action or proceeding is ordered transferred as herein provided, proceedings shall be had, and the costs and fees shall be paid, as provided in Sections 398 and 399 of this code.

§ 402. Municipal and justice courts; transfer for convenience of court

The presiding judge of a municipal or justice court district, may order, for the convenience of the court, that any case pending trial be transferred to a contiguous municipal or justice court district in the same county if the presiding judge in the district to which the case is proposed to be transferred consents to the transfer and notice thereof is given to the parties or their attorneys at least 10 days in advance of the date fixed for trial.

No fees shall be charged for the transfer of any case pursuant to this section.

§ 422.20. Justice court pleadings

~~The rules of pleading in justice courts shall be the same as the rules of pleading in municipal courts.~~

§ 422.30. Caption; contents

Every pleading shall contain a caption setting forth:

- (a) The name of the court and county, and, in municipal and justice courts, the name of the judicial district, in which the action is brought; and
- (b) The title of the action.

§ 425.10. Statement of facts; demand for judgment

A complaint or cross-complaint shall contain ~~both of~~ the following:

- (a) A statement of the facts constituting the cause of action, in ordinary and concise language.
- (b) A demand for judgment for the relief to which the pleader claims he is entitled. If the recovery of money or damages be demanded, the amount thereof shall be stated, unless the action is brought in the superior court to recover actual or punitive damages for personal injury or wrongful death, in which case the amount thereof shall not be stated.
- (c) A declaration stating whether the action is a major civil action or a minor civil action. In a county with a municipal court, a complaint or cross-complaint filed in a municipal court shall be deemed to include a declaration stating that the action is a minor civil action, and a complaint or cross-complaint filed in a superior court shall be deemed to include a declaration stating that the action is a major civil action.

§ 426.60. Application to civil actions; exceptions

(a) This article applies only to civil actions and does not apply to special proceedings.

(b) This article does not apply to actions in the small claims court ~~division~~.

(c) This article does not apply where the only relief sought is a declaration of the rights and duties of the respective parties in an action for declaratory relief under Chapter 8 (commencing with Section 1060) of Title 14 of this part.

§ 430.10. Grounds for Objection to Complaint or Cross-Complaint.

The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:

(a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading.

(b) The person who filed the pleading does not have the legal capacity to sue.

(c) There is another action pending between the same parties on the same cause of action.

(d) There is a defect or misjoinder of parties.

(e) The pleading does not state facts sufficient to constitute a cause of action.

(f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

(g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct.

(h) No certificate was filed as required by Section 411.35.

(i) No certificate was filed as required by Section 411.36.

(j) The declaration designating the action as a major civil action or a minor civil action is erroneous.

§ 489.220. Amount of undertaking

(a) Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be two thousand five hundred dollars (\$2,500) in ~~an a~~ minor civil action in the municipal or justice court, and seven thousand five hundred dollars (\$7,500) in ~~an a~~ major civil action in the superior court.

(b) If, upon objection to the undertaking, the court determines that the probable recovery for wrongful attachment exceeds the amount of the undertaking, it shall order the amount of the undertaking increased to the amount it determines to be the probable recovery for wrongful attachment if it is ultimately determined that the attachment was wrongful.

§ 575. Promulgation of rules by Judicial Council

The Judicial Council may promulgate rules governing pretrial conferences, and the time, manner and nature thereof, in civil cases at issue, or in one or more classes thereof, in the ~~superior, municipal, and justice courts~~ superior and municipal courts.

§ 575.1. Local rules; scope; purpose; promulgation

(a) The presiding judge of each ~~superior, municipal, and justice~~ superior and municipal court may prepare, with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar and others, as specified by the Judicial Council, for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies or a greater number as specified by Judicial Council rule, shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution in accordance with rules adopted by the Judicial Council. Each court shall make its local rules available for inspection and copying in every location of the court that generally accepts filing of papers. The court may impose a reasonable charge for copying the rules and may impose a reasonable page limit on copying. The rules shall be accompanied by a notice indicating where a full set of the rules may be purchased.

(c) If a judge of a court adopts a rule which applies solely to cases in that judge's courtroom, or a particular branch or district of a court adopts a rule that applies solely to cases in that particular branch or district of a court, the court shall publish these rules as part of the general publication of rules required by the California Rules of Court. The court shall organize the rules so that rules on a common subject, whether individual, branch, district, or courtwide appear sequentially. Individual judges' rules and branch and district rules are local rules of court for purposes of this section and for purposes of the adoption, publication, comment, and filing requirements set forth in the Judicial Council rules applicable to local court rules.

§ 581d. Dismissal; entry; form

A written dismissal of an action shall be entered in the clerk's register and is effective for all purposes when so entered. All dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action and such orders when so filed shall constitute judgments and be effective for all purposes, and the clerk ~~in superior, municipal, and justice courts~~ shall note such judgments in ~~his~~ the register of actions ~~in the case~~.

§ 594. Bringing issues to trial or hearing; absence of adversary; proof of notice

(a) In ~~superior, municipal, and justice~~ superior and municipal courts, either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with ~~his or her~~ her case and take a dismissal of the action, or a verdict, or judgment, as the case may

require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days' notice of such trial or five days' notice of such trial in an unlawful detainer action as specified in subdivision (b). If the adverse party has served notice of trial upon the party seeking the dismissal, verdict, or judgment at least five days prior to the trial, the adverse party shall be deemed to have had such notice.

(b) The notice to the adverse party required by subdivision (a) shall be served by mail on all the parties by the clerk of the court not less than 20 days prior to the date set for trial. In an unlawful detainer action where notice is served by mail such service shall be mailed not less than 10 days prior to the date set for trial. If notice is not served by the clerk as required by this subdivision, it may be served by mail by any party on the adverse party not less than 15 days prior to the date set for trial, and in an unlawful detainer action where notice is served by mail such service shall be mailed not less than 10 days prior to the date set for trial. The time provisions of Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions. If notice is served by the clerk, proof thereof may be made by introduction into evidence of the clerk's certificate pursuant to subdivision (3) of Section 1013a or other competent evidence. If notice is served by a party, proof may be made by introduction into evidence of an affidavit or certificate pursuant to subdivision (1) or (2) of Section 1013a or other competent evidence. The provisions of this subdivision are exclusive.

§ 628. Entry

In ~~superior, municipal, and justice~~ superior and municipal courts, upon receipt of a verdict, an entry must be made in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

§ 632. Statement of decision

In ~~superior, municipal, and justice~~ superior and municipal courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested such a statement, any party may make proposals as to the content of the statement of decision.

The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day

or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties.

§ 655. Application of article to superior, municipal and justice courts

The provisions of this article apply to ~~superior, municipal, or justice courts~~ superior and municipal courts.

§ 668. Record of judgments; superior; municipal and justice court judgment books

Except as provided in Section 668.5, the clerk of the ~~superior, municipal, and justice court~~ superior and municipal court, must keep, with the records of the court, a book called the "judgment book," in which judgments must be entered.

§ 670. Judgment roll in superior, municipal, and justice courts; contents

In ~~superior, municipal, and justice~~ superior and municipal courts, the following papers, without being attached together, shall constitute the judgment roll:

(a) In case the complaint is not answered by any defendant, the summons, with the affidavit or proof of service; the complaint; the request for entry of default with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment; if defendant has appeared by demurrer, and the demurrer has been overruled, then notice of the overruling thereof served on defendant's attorney, together with proof of the service; and in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons.

(b) In all other cases, the pleadings, all orders striking out any pleading in whole or in part, a copy of the verdict of the jury, the statement of decision of the court, or finding of the referee, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment; if there are two or more defendants in the action, and any one of them has allowed judgment to pass against him or her by default, the summons, with proof of its service, on the defendant, and if the service on the defaulting defendant be by publication, then the affidavit for publication, and the order directing the publication of the summons.

§ 685.030. Money judgments; satisfaction in full; accrual of interest; writ of execution

(a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment:

(1) If the proceeds of collection are paid in a lump sum, on the date of levy.

(2) If the money judgment is satisfied pursuant to an earnings withholding order, on the date and in the manner provided in Section 706.024 or Section 706.028.

(3) In any other case, on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

(e) The clerk of a municipal or unified superior ~~or justice~~ court may enter in the Register of Actions a writ of execution on a money judgment in a minor civil action as returned wholly satisfied when the judgment amount, as specified on the writ, is fully collected and only an interest deficit of no more than ten dollars (\$10) exists, due to automation of the continual daily interest accrual calculation.

§ 688.010. Jurisdiction

For the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, regardless whether the municipal or justice court also has jurisdiction under subdivision (b).

(b) The municipal or justice court if (1) the amount of liability sought to be collected does not exceed the jurisdictional amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

Comment

This section appears to create concurrent jurisdiction in the superior and municipal courts for purposes of enforcing the “remedies provided under this article,” which relates to the enforcement of state tax liabilities. Arguably, concurrent jurisdiction should not be possible since the Constitution vests original jurisdiction in the superior court “in all causes except those given by statute to other trial courts.” Is Section 688.010 constitutional?

§ 720.160. Undertaking by creditor; notice of opposition in case of public entity

(a) If the creditor files with the levying officer an undertaking that satisfies the requirements of this section within the time allowed under subdivision (b) of Section 720.140:

(1) The levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims of the third person for which the creditor has given the undertaking.

(b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) If the action is pending or the judgment was entered in the ~~superior court~~, a major civil action, seven thousand five hundred dollars (\$7,500), or twice the

amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) If the action is pending or the judgment was entered in a ~~municipal or justice court~~, minor civil action, two thousand five hundred dollars (\$2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the third person.

(2) Indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the third person owns or has the right of possession of the property.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

§ 720.260. Undertaking by creditor; notice of opposition in case of public entity

(a) If the creditor within the time allowed under subdivision (b) of Section 720.240 either files with the levying officer an undertaking that satisfies the requirements of this section and a statement that satisfies the requirements of Section 720.280 or makes a deposit with the levying officer of the amount claimed under Section 720.230:

(1) The levying officer shall execute the writ in the manner provided by law unless, in a case where the creditor has filed an undertaking, the secured party or lienholder files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims or liens of the secured party or lienholder for which the creditor has given the undertaking or made the deposit.

(b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) If the action is pending or the judgment was entered in the ~~superior court~~, a major civil action, seven thousand five hundred dollars (\$7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) If the action is pending or the judgment was entered in a ~~municipal or justice court~~, minor civil action, two thousand five hundred dollars (\$2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the secured party or lienholder.

(2) Indemnify the secured party or lienholder against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the security interest or lien of the third person is entitled to priority over the creditor's lien.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

§ 904.1. Superior courts Major civil actions; appealable judgments and orders

(a) An appeal may be taken ~~from a superior court~~ in a major civil action to the appropriate court of appeal in the following cases:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt which is made final and conclusive by Section 1222, (C) a judgment of the appellate division of the superior court on appeal from a municipal court or a justice court or a small claims court, or (D) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a unified superior court or a municipal court or a justice court or the judge or judges thereof which relates to a matter pending in the unified superior court or municipal or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the provisions of the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

§ 904.2. ~~Municipal and justice courts~~ Minor civil actions, appealable judgments and orders

An appeal may be taken to the appellate division of the superior court in a minor civil action ~~from a municipal or justice court~~ in the following cases:

(a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of contempt which is made final and conclusive by Section 1222.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order changing or refusing to change the place of trial.

(d) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(e) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(f) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(g) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(h) From an order appointing a receiver.

(i) From a judgment of the small claims court division .

§ 904.5. Appeals from small claims divisions courts

Appeals from the small claims division of a justice superior or municipal court shall be governed by the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1).

§ 911. ~~Municipal and justice court~~ Minor civil action appeals; transfer to court of appeal; grounds; exception; power of reviewing court

A court of appeal may order any case on appeal within the jurisdiction of the appellate division of a superior court ~~original jurisdiction of the municipal and justice courts~~ in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the appellate division of a superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

No case in which there is a right on appeal to a trial anew in the superior court shall be transferred pursuant to this section before a decision in such case becomes final therein.

A court to which any case is transferred pursuant to this section shall have similar power to review any matter and make orders and judgments as the appellate division of the superior court would have in such case, except that if the case was

tried anew in the superior court, the reviewing court shall have similar power to review any matter and make orders and judgments as it has in a case within the original jurisdiction of the superior court.

§ 1012.5. Facsimile transmission (FAX); documents; pilot projects; rules

~~(a) The Legislature finds that the use of facsimile transmission (FAX machines) has become commonplace in business and government. Currently, there are over 2.5 million FAX machines in the nation and the legal profession owns approximately 12 percent of these machines. Across the nation, courts are starting to address the use of FAX machines in the judicial system as a means of transmitting documents to the courts and to lawyers and litigants.~~

~~——— Use of FAX transmission of documents may alleviate congestion in and around courthouses, promote savings in the time spent by attorneys in filing documents with the courts and with other attorneys and litigants, and ultimately, will result in a savings to the legal consumer.~~

~~——— Therefore, the Judicial Council shall conduct pilot projects to encompass cases filed in three or more superior courts and three or more municipal or justice courts from January 1, 1990, to December 31, 1992, to determine how best to implement the use of facsimile transmission of documents in the judicial system and to assess the extent of savings due to implementation of FAX transmission. Moreover, the Judicial Council shall report to the Legislature on the results of these pilot projects and its specific proposals for implementation.~~

~~——— (b) The Judicial Council shall determine the effectiveness of these pilot projects by conducting a survey of attorneys, judicial officers, clerks of court, and process servers registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, to determine whether the pilot project is effective in: (1) reducing courthouse congestion, (2) increasing courthouse filings by FAX to at least 25 percent of all filings in those courts participating in the pilot projects, (3) producing a time savings of at least 50 percent of the time normally required to file documents with the court, and (4) producing a savings in costs billed to the client.~~

~~——— (c) The Judicial Council shall report to the Legislature on these pilot projects and make its recommendations on any changes in law needed to promote uniform, efficient, and effective service or filing of legal documents by FAX on or before December 31, 1991. The report shall include a compilation of data, proposed standards, rules, or statutes for: (1) the types of facsimile machines, including personal computers with facsimile modems, that are suitable for use by the courts in receiving legal documents for filing, (2) the quality of paper to be used to ensure the permanency of court records, (3) the readability of documents sent by facsimile transmission, (4) the service and filing of documents which require an original signature, (5) the service on other parties to the action of legal documents by FAX, (6) the filing with the court of originals of documents first filed by FAX, (7) if necessary, modification of time periods for service and filing of documents by FAX, and (8) the cost to the courts for the equipment, supplies, additional staff, and administrative costs associated with the filing of legal documents by FAX and how these costs should be recovered.~~

~~—— (d) Notwithstanding any other provision of law, the Judicial Council may adopt rules of court for use in the pilot project counties to facilitate the purposes of the pilot project and to provide an appropriate experiment. Any rules of court adopted by the Judicial Council pursuant to this subdivision shall not affect the requirements for personal or substituted service of the summons and complaint or any other opening paper.~~

Comment

Pilot project should be concluded. Confirmation sought from the Judicial Council.

§ 1029.6. Complaint for damages against medical professionals or hospital; order for undertaking by plaintiff

(a) Whenever a complaint for damages for personal injuries is filed against a physician and surgeon, dentist, registered nurse, dispensing optician, optometrist, pharmacist, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or veterinarian, duly licensed as such under the laws of this state, or a licensed hospital as the employer of any such person, in an action for error, omission, or negligence in the performance of professional services, or performance of professional services without consent, any such defendant may, within six months after service of summons, move the court for an order, upon notice to plaintiff and all defendants having appeared in the action, and hearing, requiring the plaintiff to file an undertaking in a sum not to exceed five hundred dollars (\$500) as security for the costs of defense as provided in subdivision (d), which may be awarded against the plaintiff. The motion shall be supported by affidavit showing that the claim against the defendant is frivolous. Any defendant having appeared in the action and within 30 days after receipt of notice may join with the moving party requesting an order under this section as to the additional defendant. The failure of any defendant to join with the moving party shall preclude that defendant from subsequently requesting an order under this section.

At the hearing upon the motion, the court shall order the plaintiff to file the undertaking if the defendant shows to the satisfaction of the court that: (i) the plaintiff would not suffer undue economic hardship in filing the undertaking and (ii) there is no reasonable possibility that the plaintiff has a cause of action against each named defendant with respect to whom the plaintiff would otherwise be required to file the undertaking.

A determination by the court that an undertaking either shall or shall not be filed or shall be filed as to one or more defendants and not as to others, shall not be deemed a determination of any one or more issues in the action or of the merits thereof. If the court, upon any such motion, makes a determination that an undertaking be filed by the plaintiff as to any one or more defendants, the action shall be dismissed as to that defendant or defendants, unless the undertaking required by the court shall have been filed within the reasonable time as may be fixed by the court.

(b) This section does not apply to a complaint in an action commenced in a small claims court division.

(c) Whenever more than one defendant is named, the undertaking shall be increased to the extent of not to exceed five hundred dollars (\$500) for each additional defendant in whose favor the undertaking is ordered, not to exceed the total of one thousand dollars (\$1,000).

(d) In any action requiring an undertaking as provided in this section, upon the dismissal of the action or the award of judgment to the defendant, the court shall require the plaintiff to pay the defendant's court costs. Any sureties shall be liable for those costs in an amount not to exceed the sum of five hundred dollars (\$500) or the amount of the undertaking, whichever is lesser, for each defendant with respect to whom the sureties have executed an undertaking. If the plaintiff prevails in the action against any defendant with respect to whom an undertaking has been filed, the defendant shall pay the costs to plaintiff incurred in defending the motion for dismissal authorized by this section.

(e) Any defendant filing a motion under this section or joining with a moving party under this section is precluded from subsequently filing a motion for summary judgment.

(f) Any defendant filing a motion for summary judgment is precluded from subsequently filing a motion, or joining with a moving party, under this section.

§ 1033. Superior court judgment that could have been rendered in lower court; recovery in municipal or justice court Judgment in a major civil action that could have been rendered in a minor civil action; recovery in major or minor civil action of less than small claims court jurisdiction; determination of costs

(a) In the superior court, an action filed as a major civil action, costs or any portion of claimed costs shall be as determined by the court in its discretion in accordance with Section 1034 where the prevailing party recovers a judgment that could have been rendered in a court of lesser jurisdiction an action filed as a minor civil action.

~~(b) In a municipal or justice court, when~~ When a prevailing plaintiff recovers less than the amount prescribed by law as the maximum limitation upon the jurisdiction of the small claims court division, the following shall apply:

(1) When the party could have brought the action in the small claims court division, the court may, in its discretion, allow or deny costs to the prevailing party, or may allow costs in part in any amount as it deems proper.

(2) When the party could not have brought the action in the small claims court division, costs and necessary disbursements shall be limited to the actual cost of the filing fee, the actual cost of service of process, and, when otherwise specifically allowed by law, reasonable attorney fees. However, those costs shall only be awarded to the plaintiff if the court is satisfied that prior to the commencement of the action, the plaintiff informed the defendant in writing of the intended legal action against the defendant and that legal action could result in a judgment against the defendant which would include the costs and necessary disbursements allowed by this paragraph.

§ 1052. Municipal and justice court clerks; register of civil actions; entries

The clerk of a municipal or justice court may keep among the records of the court a register of civil actions in which shall be entered the title of the action commenced in that court, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

§ 1052.5. Alternative methods of keeping register of actions

In lieu of maintaining a register of actions as described in Section 1052, the clerk of the municipal or justice court may maintain a register of actions by means of photographing, microphotographing, or mechanically or electronically storing the whole content of all papers and records, or any portion thereof, as will constitute a memorandum, necessary to the keeping of a register of actions so long as the completeness and chronological sequence of the register are not disturbed.

All such reproductions shall be placed in convenient, accessible files, and provision shall be made for preserving, examining, and using them.

Any photograph, microphotograph, or photocopy which is made pursuant to this section shall be made in such manner and on such paper as will comply with the minimum standards of quality approved therefor by the National Bureau of Standards.

§ 1060. Right of action; actual controversy; scope; effect of declaration

Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court or in the municipal or justice court to the extent allowed pursuant to Article 1 (commencing with Section 86) of Chapter 5 of Title 1 of Part 1 for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

§ 1068. Courts which may grant writ; circumstances authorizing grant

(a) A writ of review may be granted by any court, except a municipal or justice court, when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

(b) The appellate division of the superior court may grant a writ of review directed at the superior court in causes within the appellate jurisdiction of the appellate division of the superior court.

§ 1085. Courts which may issue writ; parties to whom issued; purpose of writ

(a) It A writ of mandate may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

(b) The appellate division of the superior court may grant a writ of mandate directed at the superior court in causes within the appellate jurisdiction of the appellate division of the superior court.

§ 1103. Courts which may issue writ; parties to whom issued; petition

(a) It A writ of prohibition may be issued by any court, except municipal or justice courts, to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

(b) The appellate division of the superior court may grant a writ of prohibition directly at the superior court in causes within the appellate jurisdiction of the appellate division of the superior court.

§ 1134. Defendant's written statement; filing; entry of judgment; costs; judgment roll

In all courts the statement must be filed with the clerk of the court in which the judgment is to be entered, who must endorse upon it, and enter a judgment of such court for the amount confessed with the costs hereinafter set forth. At the time of filing, the plaintiff shall pay as court costs which shall become a part of the judgment the following fees: in ~~superior courts~~ major civil actions fifteen dollars (\$15) and in ~~municipal courts and justice courts~~ minor civil actions ten dollars (\$10). No fee shall be collected from the defendant. No fee shall be paid by the clerk of the court in which said confession of judgment is filed for the law library fund nor for services of any court reporter. The statement and affidavit, with the judgment endorsed thereon, becomes the judgment roll.

§ 1141.11. At-issue civil actions in superior courts and municipal court districts; amount in controversy; submission to arbitration; use of case questionnaires

(a) In each superior court with 10 or more judges, all at-issue civil actions pending on or filed after the operative date of this chapter shall be submitted to arbitration, by the presiding judge or the judge designated, under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not be appealable.

(b) In each superior court with less than 10 judges, the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not be appealable.

(c) In each municipal court district, the municipal court district may provide by local rule, when it is determined to be in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter in such judicial district, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter. This section does not apply to any action in small claims court division, or to any action maintained pursuant to Section 1781 of the Civil Code or Section 1161 of this code.

(d) In each municipal court district which has adopted judicial arbitration pursuant to subdivision (c), all civil actions pending on or after July 1, 1990, which involve a claim for money damages against a single defendant as a result of a motor vehicle collision, except those heard in the small claims division, shall be submitted to arbitration within 120 days of the filing of the defendant's answer to the complaint (except as may be extended by the court for good cause) before an arbitrator selected by the court, subject to disqualification for cause as specified in Sections 170.1 and 170.6.

The court may provide by local rule for the voluntary or mandatory use of case questionnaires, established under Section 93, in any proceeding subject to these provisions. Where local rules provide for the use of case questionnaires, the questionnaires shall be exchanged by the parties upon the defendant's answer and completed and returned within 60 days.

For the purposes of this subdivision, the term "single defendant" means (1) an individual defendant, whether a person or an entity, (2) two or more persons covered by the same insurance policy applicable to the motor vehicle collision, or (3) two or more persons residing in the same household when no insurance policy exists that is applicable to the motor vehicle collision. The naming of one or more cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not subject to the provisions of this subdivision.

(e) The provisions of this chapter shall not apply to those actions filed in a superior or municipal court which has been selected pursuant to Section 1823.1 and is participating in a pilot project pursuant to Title 1 (commencing with Section 1823) of Part 3.5; provided, however, that any superior or municipal court may provide by local rule that the provisions of this chapter shall apply to actions pending on or filed after July 1, 1979. Any action filed in such court after the conclusion of the pilot project shall be subject to the provisions of this chapter.

(f) No local rule of a superior court providing for judicial arbitration may dispense with the conference required pursuant to Section 1141.16.

§ 1141.12. At-issue civil actions in superior courts upon stipulation of parties; uniform system in other courts; stipulation of parties and election to limit award; time for filing election

(a) In each superior court in which arbitration may be had pursuant to subdivision (a) or (b) of Section 1141.11, upon stipulation of the parties, any at-issue civil actions shall be submitted to arbitration regardless of the amount in controversy.

(b) In all other superior, ~~municipal, and justice~~ and municipal courts, the Judicial Council shall provide by rule for a uniform system of arbitration of the following causes:

(i) Any cause upon stipulation of the parties, and

(ii) Upon filing of an election by the plaintiff, any cause in which the plaintiff agrees that the arbitration award shall not exceed the amount in controversy as specified in Section 1141.11.

(c) Any election by a plaintiff shall be filed no sooner than the filing of the at-issue memorandum, and no later than 90 days before trial, or at a later time if permitted by the court.

§ 1161.2. Case court records; public access; defendant notice; filing fee; ~~municipal court minor civil action~~ exemption; Judicial Council examination; mobilehome park tenancy

(a) Except as provided in subdivision (g), in any case filed under this chapter as a minor civil action in a unified superior court or a municipal court, the court clerk shall not allow access to the court file, index, register of actions, or other court records until 60 days following the date the complaint is filed, except pursuant to an ex parte court order upon a showing of good cause therefor by any person including, but not limited to, a newspaper publisher. However, the clerk of the court shall allow access to the court file to a party in the action, an attorney of a party in the action, or any other person who (1) provides to the clerk the names of at least one plaintiff, one defendant, and the address, including the apartment, unit, or space number, if applicable, of the subject premises, or (2) provides to the clerk the name of one of the parties or the case number and can establish through proper identification that he or she resides at the subject premises.

(b) For purposes of this section "good cause" includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Except as provided in subdivision (g), upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an ex parte order upon a showing of good cause therefor. The notice shall contain on its face the name and phone number of the county bar association and the name and phone number of an office funded by the federal Legal

Services Corporation which provides legal services to low- income persons in the county in which the action is filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to "all occupants" and mailed separately to the subject premises. The notice shall not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall, upon adoption of a resolution by the board of supervisors requiring such a fee, charge an additional fee for filing a first appearance by the plaintiff in an amount equal in the aggregate to the actual cost of complying with this section, but which shall not exceed a maximum of four dollars (\$4). This fee shall be included as part of the total filing fee for actions filed under this chapter. Any such board resolution in effect on January 1, 1994, shall remain in effect until it is repealed.

(e) A unified superior court or a municipal court, after consultation with local associations of rental property owners, tenant groups, and providers of legal services to tenants, may exempt itself from the operation of this section upon a finding that unscrupulous eviction defense services are not a substantial problem in the judicial district. The court shall review the finding every 12 months. An exempt court shall not charge the additional fee authorized in subdivision (d).

(f) The Judicial Council shall examine the extent to which requests for access to files pursuant to an ex parte order under subdivision (a) are granted or denied, and if denied, the reason for the denial of access.

(g) This section shall not apply to a case which seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

§ 1710.20. Filing of application; place

(a) The application shall be filed in a unified superior court or a municipal or justice court in all cases in which the sister state judgment amounts to twenty-five thousand dollars (\$25,000) or less and in a superior court in all other cases.

(b) Subject to the power of the court to transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is any of the following:

- (1) The county in which any judgment debtor resides; or
- (2) If no judgment debtor is a resident, any county in this state.

§ 1775.1. Definitions

(a) As used in this title:

(1) "Court" means a superior court, municipal court, or justice court. or municipal court.

(2) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(C.C.P., p. 54)

(b) Unless otherwise specified in this title or ordered by the court, any act to be performed by a party may also be performed by his or her counsel of record.

§ 1995. Witness a prisoner; deposition; production before court; courts authorized to order production

If the witness be a prisoner, confined in a jail within this state, an order for his examination in the jail upon deposition, or for his temporary removal and production before a court or officer may be made as follows:

1. By the court itself in which the action or special proceeding is pending, unless it be a ~~small claims court~~ a small claims division .

2. By a justice of the Supreme Court, or a judge of the superior court of the county where the action or proceeding is pending, if pending before a small claims ~~court~~ division, or before a judge or other person out of court.

§ 2015.3. Certificate of sheriff, marshal, or court clerk; force and effect

The certificate of a sheriff, marshal, or the clerk of the ~~superior, municipal, or justice superior or municipal~~ superior or municipal court, has the same force and effect as his or her affidavit.